APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,696	12/31/2003	Lorrie A. Creveling	20655.0600	2179

66170   7590   08/31/2010
Snell & Wilmer L.L.P. (AMEX)
ONE ARIZONA CENTER
400 E. VAN BUREN STREET
PHOENIX, AZ 85004-2202

EXAMINER
GREGG, MARY M

ART UNIT	PAPER NUMBER
3694	

NOTIFICATION DATE	DELIVERY MODE
08/31/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

HSOBELMAN@SWLAW.COM
DMIER@SWLAW.COM
JESLICK@SWLAW.COM

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/749,696	CREVELING ET AL.
	Examiner	Art Unit	
	MARY GREGG	3694	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

THE REPLY FILED <u>10 August 2010</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

     a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

     b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

         Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

     (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

     (b)☐ They raise the issue of new matter (see NOTE below);

     (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

     (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

         NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

     The status of the claim(s) is (or will be) as follows:

     Claim(s) allowed: _____.

     Claim(s) objected to: _____.

     Claim(s) rejected: <u>1-14 and 16- 23</u>.

     Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>applicant's arguments were not persuasive, .</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☒ Other: <u>See Continuation Sheet.</u>

/M. G./ Examiner, Art Unit 3694	/Shahid R Merchant/ Primary Examiner, Art Unit 3694

Continuation of 13. Other: In the remarks the applicant requested clarification of examiner's statement of page 4 of the previous Office Action, the claim limitation being addressed was merchant's exceeding a ratio. A percentage inherently is a ratio. The prior art teaches that credit exceeding credit risk for chargebacks and teaches chargebacks as a percentage of the sales. Therefore, the prior art fairly suggest that the exceeded risk is measured relative to the percentage of the chargebacks vs the sales. In the remarks the applicant argues (1) that the prior art combination Cannon in view of Lee and further in view of Richey fails to teach or suggest "assessing a fee against the merchant for each disputed transaction involving the merchant that exceeds the predetermined threshold ratio and wherein the predetermined threshold ratio is set based on a transaction value amount of each of the disputed credit transactions of the merchant" (2) the applicant argues that the prior art combination Cannon in view of Lee, in view of Richey and further in view of Sharper fails to teach or suggest "assessing, using the computer-based system, a fee against the merchant for each disputed transaction involving the merchant that exceeds the predetermined threshold ratio, in response to the merchant's ratio being at least equal to the predetermined threshold ratio, wherein the predetermined threshold ratio is set based on a transaction value amount of each of the disputed credit transactions of the merchant", (3) When a phrase similar to "at least one of A, B, or C" or "at least one of A, B, and C" is used in the claims or specification, Applicants intend the phrase to mean any of the following (1) at least one of A; (2) at least one of B; (3) at least one of C; (4) at least one of A and at least one of B; (5) at least one of B and at least one of C; (6) at least one of A and at least one of C; or (7) at least one of A, at least one of B, and at least one of C.

In response to argument (1) that the prior art combination Cannon in view of Lee and further in view of Richey fails to teach or suggest "assessing a fee against the merchant for each disputed transaction involving the merchant that exceeds the predetermined threshold ratio and wherein the predetermined threshold ratio is set based on a transaction value amount of each of the disputed credit transactions of the merchant", the examiner respectfully disagrees.
The prior art Cannon explicitly teaches:

Col 3 lines 33-Col 4 lines 1-8:
The excessive chargeback ratio report lists all merchants with an excessive ratio of chargebacks to transactions that exceeds the ratio specified by the user. A chargeback is a transaction that has been challenged by a cardholder and returned through interchange to the acquiring bank by a card holder issuing bank. This report enables the user to individually address merchants with excessive chargebacks. The merchant activity/inactivity report provides a summary of the merchant portfolio activity on a monthly and year to date basis including the user's total merchant base including active merchants and canceled merchants.
(11) The merchant alphabetical listing report provides a listing of the user's merchants in alphabetical order including merchant numbers and addresses. This report allows the user to locate and cross reference information about any account. The merchant inactivity report provides a list of all accounts that have been inactive from 10 to 180 days. This report lists the first and last day of activity as well as the last twelve months of financial activity. This report highlights those merchants that are not performing up to the standards of the user.
(12) The merchant numerical listing report provides a list of all the merchants of the user in numerical order. It contains the same information as the alphabetical listing report. The portfolio profitability recap report summarizes the user's profit on a month to date and year to date basis by three categories: discount income, fee income, and cash advance income. Also included in this report is the basis spread of the user's portfolio allowing for portfolio profitability tracking on a monthly basis.
Col 4 lines 43-55:
Referring now to FIG. 7, a WWW page 130 is displayed on client station 16 when user clicks Chargebacks/Retrieval 52 hyperlink. WWW page 130 includes the following hyperlinks to reports corresponding to the chargebacks/retrieval category: Chargeback Activity Summary 132, Chargeback Aging By Reason Code 133, Monthly Chargeback Summary 134, and Monthly Retrieval Activity 136.
(17) The chargeback activity summary report provides aging summary for all open chargebacks. The chargeback aging by reasons code report provides information regarding chargeback aging by logical association reason code groupings. The monthly chargeback summary report provides information regarding chargebacks as a percentage of sale for the previous month's activity The monthly retrieval activity report provides retrieval information including total requests during the last twelve months, the total request fulfilled during the last twelve months, the total requests fulfilled in less than thirty days during the last twelve months, and the percentage fulfilled in less than thirty days. FIG. 8 shows a sample monthly retrieval activity report displayed on client station 16 when the user clicks Monthly Retrieval Activity hyperlink 136.
Col 7 lines 48-67:
The credits exceeding sales exception report highlights all merchants whose dollar amount of credits on any given day exceeds the amount of sales for that day by a given amount and percentage. Excessive credits create immediate risks and need to be investigated immediately.
(49) The daily credit variance (signed norm) report is for newly signed/depositing merchants. This report highlights those merchants whose actual average ticket variance exceeds their signed average ticket by a predefined percentage.
(50) The daily average ticket variance-2 provides a listing of merchants who have average ticket variances. It provides a comparison of the merchant's three month average ticket to the daily average ticket and annual signed sales to actual activity. Merchants listed should be reviewed for invalid sales, factoring, etc.
(51) The daily credit report calculates a merchant's credit ratio (credits divided into sales) and highlights those which are considered to be excessive.
(52) The daily declined/referred rate provides a listing of merchants whose daily declined or daily referral rate/pickup authorization exceed certain parameters. It identifies merchants who are fishing for credit or credit lines, or have obtained lost or stolen credit cards.
(53) The daily exception NRPT report (DER) highlights all merchants whose net revenue per transaction (total discounts less interchange divided by number of transactions) exceeds a specified dollar parameter. The report is segmented by length on board and is used to highlight unusually high average tickets.
Cannon as disclosed in the previous Office Action does not teach   "assessing a fee". However, the prior art Cannon explicitly teaches

disputed transactions that exceed pre-determined ratios that is based upon transaction values.

With respect to the limitation "assessing a fee against merchant for each disputed transaction", the prior art Lee teaches explicitly:

Para 0019

[0017] A chargeback is a charge levied onto a merchant for the amount of a purchase that has previously been charged onto a payment card, and has been successfully disputed by a customer. When a chargeback is processed, the merchant must pay a fee of $15.00 to 25.00. If the merchant disputes the chargeback and wants to re-present, or re-issue, the charge, an equivalent fee is billed to the merchant. If the card issuer again decides in favor of the customer and processes a second chargeback, the merchant is charged yet another fee, and this time the charge cannot be re-presented. The merchant can, however, arbitrate the charge, whereupon the issuing bank can charge an up-front, non-refundable fee of up to $50.00.

Note that the charge back fees are enacted with respect to specific chargeback.

Richey teaches 50-61:

Col 16 lines 50-61:

Comments are included to describe the reason for the ruling. Once a ruling has been made by the analyst, both parties to a dispute are notified of the decision and the fees, penalties and fines levied, if any. Amounts and fees may be divided between the parties to the dispute. The analyst has the discretion to adjust these amounts. Withdrawn cases may be charged to the withdrawing party. In one exemplary embodiments, the online dispute resolution system 10 only permits each party to see its own ruling. Parties to the dispute are responsible for notifying their respective cardholder and merchant of the ruling.

Col 18 lines 53-60:

The online dispute resolution system 10 is able to search for the exact date and amount and also for dates and amounts close to those input. This flexibility accommodates differences in system dates and any possible fees included in the amount. To provide additional security, the online dispute resolution system 10 forwards the search results to an e-mail address provided by the requesting cardholder.

Note that the fees are addressing explicit chargeback which makes obvious "each".

Col 21 lines 58-Col 1-11:

Another category of reports that are also available to users of the online dispute resolution system 10 includes, for example, case filing and ruling reports that provide users statistical information for all their cases that are pending a ruling or are closed; arbitration, compliance and direct compliance dispute resolution summary and detail reports for closed arbitration and compliance cases reporting information, such as, percentage of withdrawals, wins, losses, rejects, and splits for issuers and acquirers, fees assessed for the cases and a comparison of system-wide performance; mediation report that provides case counts by type of ruling, percentage of issuer wins versus acquirer wins and system-wide percentage of wins. Other administrative reports are also available to administrators of the online dispute resolution system 10 including, for example, case filing and ruling daily report that provides summaries for each day of all cases filed and rulings received; case detail report that provides information (e.g. questionnaire data, documents) contained in one or more case folders; and case review monthly report that provides status by analyst of all cases in process or in review.

Col 22 lines 28-43:

The online dispute resolution system 10 also produces reports on service usage and productivity. Service usage and productivity reports provide information to evaluate and improve operator productivity and performance. Cardholder and merchant activity is available in this set of reports and a summary of fees and charges assessed upon dispute resolution. These reports include, for example, operator and group productivity reports that provide counts for worked items (e.g. requests for copy, transactions initiated, closed, fulfilled, completed questionnaires, merchants serviced/terminated, etc.) by operator or group of operators; cardholder activity report that provides detail and summary activity by cardholder; merchant activity report that provides detail and summary activity by merchant; service fees and charges report that provides detail and summary counts and amounts for all fees and charges by dispute transaction type; and system performance report that supports system performance tuning by providing minimum, average and maximum response times for each service action.

The examiner maintains that the prior art Cannon teaches predetermined threshold ratio with respect to chargebacks and transactions, Richey teaches explicitly fees accessed for each charge back and teaches explicitly chargeback events and percentage "of withdrawals, wins, losses, rejects, and splits for issuers and acquirers, fees assessed for the cases and a comparison of system-wide performance; mediation report that provides case counts by type of ruling, percentage of issuer wins versus acquirer wins and system-wide percentage of wins" and Lee teaches explicitly "A chargeback is a charge levied onto a merchant for the amount of a purchase that has previously been charged onto a payment card, and has been successfully disputed by a customer".

Therefore, the examiner maintains that as prior art combination teaches that both a fee per chargeback and a fine for too many chargebacks (i.e. typically 1.5-3% of volume) are both taught. The combination of these methods of penalizing chargebacks fairly suggests charging a fee for each transaction that exceeds a threshold in so far as the fee per charge back suggests the 'for each' component and the fine for having too many suggests applying the fee above a threshold). Applicant's arguments are not persuasive., .